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6 Attorneys for Defendant and Counterclaimant  
7 INDYMAC VENTURE, LLC

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 EDEN GARDEN, LLC, a California  
limited liability company; ALI K.  
11 AMIDY, an individual; GUITI  
NAHAVANDI AMIDY, an individual;  
12 CENTRA NET INVESTMENT LLC, a  
California limited liability company,;

13 Plaintiffs,

14 vs.

15 INDY MAC VENTURE, LLC., a limited  
16 liability company, FEDERAL DEPOSIT  
INSURANCE CORPORATION, as  
17 Conservator of IndyMac Federal Bank,  
FSB and Does 1 through 10,

18 Defendants.

19 INDYMAC VENTURE, LLC, a limited  
20 liability company,

21 Counterclaimant,

22 vs.

23 ALI K. AMIDY, an individual; GUITI  
24 NAHAVANDI AMIDY, an individual;  
CENTRA NET INVESTMENT LLC, a  
California limited liability company,

25 Counterdefendants.  
26  
27  
28

Case No. CV11-02356-HRL

**ANSWER OF DEFENDANT AND  
COUNTERCLAIMANT INDYMAC  
VENTURE, LLC TO COMPLAINT**

[DEMAND FOR JURY TRIAL]



1 Defendant and Counterclaimant Indymac Venture, LLC ("Defendant"), by  
2 and through its undersigned counsel, hereby answers the Complaint ("Complaint")  
3 filed by Plaintiffs Eden Garden, LLC ("Eden Garden"), Ali K. Amidy, Guiti  
4 Nahavandi Amidy, and Centra Net Investment, LLC ("Plaintiffs"). Defendant  
5 denies generally and specifically each and every allegation in the Complaint not  
6 specifically admitted herein.

7 For ease of reference, Defendant repeats the primary headings in the  
8 Complaint. To the extent those headings may be construed as allegations against  
9 Defendant, they are generally and specifically denied.

10 Below, Defendant answers the specific allegations in the numbered  
11 paragraphs of the Complaint as follows:

12 **THE PARTIES**

13 1. Defendant admits that Eden Garden is a limited liability company  
14 formed and existing under the laws of the State of California. Defendant is without  
15 information sufficient to form a belief as to the truth of the remaining allegations in  
16 paragraph 1 of the Complaint, and therefore denies generally and specifically each  
17 and every remaining allegation therein.

18 2. Defendant admits that Plaintiffs Ali K. Amidy and Guiti Nahavandi  
19 Amidi are individuals residing and/or doing business in the State of California,  
20 County of Santa Clara. Defendant is without information sufficient to form a belief  
21 as to the truth of the remaining allegations in paragraph 2 of the Complaint, and  
22 therefore denies generally and specifically each and every remaining allegation  
23 therein.

24 3. Defendant admits that Plaintiff Centra Net Investment, LLC ("Centra  
25 Net") is a limited liability company formed and existing under the laws of the State  
26 of California and doing business in the State of California, County of Santa Clara.  
27 Defendant is without information sufficient to form a belief as to the truth of the  
28



1 remaining allegations in paragraph 3 of the Complaint, and therefore denies  
2 generally and specifically each and every remaining allegation therein.

3       4. Defendant admits that the Federal Deposit Insurance Corporation  
4 ("FDIC") is a corporation formed pursuant to the laws of the United States.  
5 Defendant is without information sufficient to form a belief as to the truth of the  
6 remaining allegations in paragraph 4 of the Complaint, and therefore denies  
7 generally and specifically each and every remaining allegation therein.

8       5. Defendant admits that Defendant is a limited liability company.  
9 Defendant further admits that it is an assignee of certain assets that originated with  
10 IndyMac Bank, FSB ("Original Lender"), including, without limitation, (1) that  
11 certain Building Loan Agreement (Residential Tract Construction) dated as of  
12 September 30, 2005 between Eden Garden and Original Lender, as amended  
13 ("Building Loan Agreement"), (2) that certain Additional Advance and First  
14 Modification Agreement to the Building Loan Agreement; Promissory Note;  
15 Construction Deed of Trust With Assignment of Rents, Security Agreement and  
16 Fixture Filing and Other Loan Documents (Long Form) dated as of February 14,  
17 2007 between Eden Garden and Original Lender and that certain Additional  
18 Advance and First Modification Agreement to the Building Loan Agreement;  
19 Promissory Note; Construction Deed of Trust With Assignment of Rents, Security  
20 Agreement and Fixture Filing and Other Loan Documents (Short Form) dated as of  
21 February 14, 2007 between Eden Garden and Original Lender, (collectively, the  
22 "Amendments"), (3) that certain Promissory Note dated as of September 30, 2005  
23 between Eden Garden and Original Lender, as amended ("Note"), and (4) that  
24 certain Construction Trust Deed With Assignment of Rents, Security Agreement  
25 and Fixture Filing dated as of September 30, 2005 between Eden Garden, as Trustor,  
26 Fidelity National Title Insurance Company, as Trustee, and Original Lender, as  
27 Beneficiary, as amended ("Trust Deed"). Defendant is unable to determine what is  
28 meant by the phrase "and associated claims and cross-claims involved in this



1 litigation" as used in paragraph 5 of the Complaint, and therefore denies each and  
2 every allegation contained therein. Except as expressly admitted herein, Defendant  
3 denies generally and specifically each and every allegation in paragraph 5 of the  
4 Complaint.

5         6. Defendant is without information sufficient to form a belief as to the  
6 truth of the allegations in paragraph 6 of the Complaint, and therefore denies  
7 generally and specifically each and every allegation therein.

8         7. Defendant is unable to determine what is meant by the allegations in  
9 paragraph 7 of the Complaint, and therefore denies generally and specifically each  
10 and every allegation therein.

11         8. Defendant admits that on or about September 30, 2005, Eden Garden  
12 and Original Lender entered into the Building Loan Agreement. Defendant states  
13 that the Building Loan Agreement speaks for itself and provides according to its  
14 terms. Defendant is without information sufficient to form a belief as to the truth of  
15 the allegation that "the total Project cost was expected to be in the amount of  
16 \$7,667,490.00, with Plaintiffs contributing \$1,763,490.00 in cash and equity," and  
17 therefore denies generally and specifically that allegation. Except as expressly  
18 admitted herein, Defendant denies generally and specifically each and every  
19 allegation in paragraph 8 of the Complaint.

20         9. Defendant states that (1) Section 3.00 of the Building Loan Agreement,  
21 (2) Section (b) of Exhibit "B" to the Building Loan Agreement, (3) Section (f) of  
22 Exhibit "B" to the Building Loan Agreement, (4) Section (g) of Exhibit "B" to the  
23 Building Loan Agreement, (5) Section 4.01 of the Building Loan Agreement,  
24 (6) Section 4.05 of the Building Loan Agreement, (7) Exhibit "E" to the Building  
25 Loan Agreement, (8) Section 4.11 of the Building Loan Agreement, (9) Section J of  
26 Exhibit "C" to the Building Loan Agreement, and (10) Section L of Exhibit "C" to  
27 the Building Loan Agreement all speak for themselves and provide according to  
28



1 their terms. Except as expressly stated herein, Defendant denies generally and  
2 specifically each and every allegation in paragraph 9 of the Complaint.

3 10. Defendant states that Section (f) of Exhibit "B" to the Building Loan  
4 Agreement speaks for itself and provides according to its terms. Except as expressly  
5 stated herein, Defendant denies generally and specifically each and every allegation  
6 in paragraph 10 of the Complaint.

7 11. Defendant states that the Building Loan Agreement speaks for itself  
8 and provides according to its terms. Except as expressly stated herein, Defendant  
9 denies generally and specifically each and every allegation in paragraph 11 of the  
10 Complaint.

11 12. Defendant admits that on or about September 30, 2005, Eden Garden  
12 executed and delivered to Original Lender the Note, which speaks for itself and  
13 provides according to its terms. Except as expressly stated herein, Defendant denies  
14 generally and specifically each and every allegation in paragraph 12 of the  
15 Complaint.

16 13. Defendant admits that the Note is secured by, among other things, the  
17 Trust Deed, which speaks for itself and provides according to its terms. Defendant  
18 further admits that the Trust Deed was recorded on or about November 8, 2005 in  
19 the Official Records of Santa Clara County, California ("Official Records"), as  
20 Document No. 18668901. Except as expressly stated herein, Defendant denies  
21 generally and specifically each and every allegation in paragraph 13 of the  
22 Complaint.

23 14. Defendant admits the allegations in paragraph 14 of the Complaint.

24 15. Defendant admits the allegations in paragraph 15 of the Complaint.

25 16. Defendant is without information sufficient to form a belief as to the  
26 truth of the allegations in paragraph 16 of the Complaint, and therefore denies  
27 generally and specifically each and every allegation therein.  
28



1           17. Defendant is without information sufficient to form a belief as to the  
2 truth of the allegations in paragraph 17 of the Complaint, and therefore denies  
3 generally and specifically each and every allegation therein.

4           18. Defendant admits that Plaintiffs and Original Lender entered into the  
5 Amendments, which speak for themselves and provide according to their terms.  
6 Defendant is without information sufficient to form a belief as to the truth of the  
7 remaining allegations in paragraph 18 of the Complaint, and therefore denies  
8 generally and specifically each and every remaining allegation therein.

9           19. Defendant admits that Plaintiffs and Original Lender entered into the  
10 Amendments, which speak for themselves and provide according to their terms.  
11 Defendant denies generally and specifically each and every remaining allegation in  
12 paragraph 19 of the Complaint.

13           20. Defendant denies generally and specifically each and every allegation  
14 in paragraph 20 of the Complaint.

15           21. Defendant denies that IndyMac Bank, FSB assured Plaintiffs that  
16 IndyMac Bank, FSB would extend the maturity date of the Note to March 2009 if  
17 Plaintiffs so requested. Defendant is without information sufficient to form a belief  
18 as to the truth of the remaining allegations in paragraph 21 of the Complaint, and  
19 therefore denies generally and specifically each and every remaining allegation  
20 therein.

21           22. Defendant denies generally and specifically each and every allegation  
22 in paragraph 22 of the Complaint.

23           23. Defendant admits that on or about July 11, 2008, Original Lender was  
24 seized by the Office of Thrift Supervision and the FDIC was appointed as Receiver  
25 for Original Lender. Defendant further admits that on or about July 11, 2008,  
26 IndyMac Federal Bank, FSB ("IMFB") was chartered as a new institution and some  
27 of the assets and liabilities of Original Lender were transferred to IMFB. Defendant  
28 further admits that the FDIC was appointed as Conservator of IMFB. Defendant is



1 unable to determine what is meant by the phrase "including the claims and cross-  
2 claims involved in this litigation" as used in paragraph 23, and therefore denies  
3 generally and specifically each and every allegation contained therein. Except as  
4 expressly admitted herein, Defendant denies generally and specifically each and  
5 every allegation in paragraph 23 of the Complaint.

6       24. Defendant admits that on or about November 12, 2008, the FDIC filed  
7 a complaint against Plaintiffs in the Superior Court for the County of Santa Clara,  
8 Case Number 108CV127419 ("Prior Lawsuit"). Defendant states that the Complaint  
9 in the Prior Lawsuit speaks for itself. Defendant is without information sufficient to  
10 form a belief as to the truth of the remaining allegations in paragraph 24 of the  
11 Complaint, and therefore denies generally and specifically each and every remaining  
12 allegation therein.

13       25. Defendant is without information sufficient to form a belief as to the  
14 truth of the allegations in paragraph 25 of the Complaint, and therefore denies  
15 generally and specifically each and every allegation therein.

16       26. Defendant admits that Defendant and Plaintiffs entered into that certain  
17 Agreement Tolling Statutes of Limitation dated as of May 4, 2010 ("Tolling  
18 Agreement"), which speaks for itself and provides according to its terms. Defendant  
19 denies generally and specifically each and every remaining allegation in paragraph  
20 26 of the Complaint.

21       27. Defendant admits that on or about May 5, 2010, Defendant and  
22 Plaintiffs executed a mutual dismissal of the Prior Lawsuit without prejudice, which  
23 was filed with the Court. Defendant is informed and believes that the Tolling  
24 Agreement was also filed with the Court. Except as expressly admitted herein,  
25 Defendant denies generally and specifically each and every allegation in paragraph  
26 27 of the Complaint.

27       28. Defendant admits that on or about May 24, 2010 a Notice of Default  
28 And Election to Sell Under Deed of Trust was recorded as Document 20720114 in



1 the Official Records and that thereafter Defendant proceeded with a non-judicial  
 2 foreclosure of the Trust Deed. Except as expressly admitted herein, Defendant  
 3 denies generally and specifically each and every allegation in paragraph 28 of the  
 4 Complaint.

### 5 **FIRST CAUSE OF ACTION**

#### 6 **(Breach of Settlement Agreement)**

7 29. Defendant repeats and incorporates its response to paragraphs 1  
 8 through 28, above, as if fully set forth in this paragraph.

9 30. Defendant denies generally and specifically each and every allegation  
 10 in paragraph 30 of the Complaint.

11 Defendant denies that Plaintiffs are entitled to the relief requested in the  
 12 Complaint or any relief at all.

### 13 **SECOND CAUSE OF ACTION**

#### 14 **(Promissory Fraud)**

15 31. Defendant repeats and incorporates its response to paragraphs 1  
 16 through 28, above, as if fully set forth in this paragraph.

17 32. Defendant denies generally and specifically each and every allegation  
 18 in paragraph 32 of the Complaint.

19 33. Defendant denies generally and specifically each and every allegation  
 20 in paragraph 33 of the Complaint.

21 34. Defendant denies generally and specifically each and every allegation  
 22 in paragraph 34 of the Complaint.

23 35. Defendant denies generally and specifically each and every allegation  
 24 in paragraph 35 of the Complaint.

25 36. Defendant denies generally and specifically each and every allegation  
 26 in paragraph 36 of the Complaint.

27 37. Defendant denies generally and specifically each and every allegation  
 28 in paragraph 37 of the Complaint.



38. Defendant denies generally and specifically each and every allegation in paragraph 38 of the Complaint.

39. Defendant denies generally and specifically each and every allegation in paragraph 39 of the Complaint.

40. Defendant denies generally and specifically each and every allegation in paragraph 40 of the Complaint.

41. Defendant denies generally and specifically each and every allegation in paragraph 41 of the Complaint.

Defendant denies that Plaintiffs are entitled to the relief requested in the Complaint or any relief at all.

### **THIRD CAUSE OF ACTION**

#### **(Negligent Misrepresentation)**

42. Defendant repeats and incorporates its response to paragraphs 1 through 41, above, as if fully set forth in this paragraph.

43. Defendant denies generally and specifically each and every allegation in paragraph 43 of the Complaint.

Defendant denies that Plaintiffs are entitled to the relief requested in the Complaint or any relief at all.

### **FOURTH CAUSE OF ACTION**

#### **(Fraud In The Inducement – Loan Agreement, Note, Trust Deed, Amidy Guaranty, and Centra Net Guaranty)**

44. Defendant repeats and incorporates its response to paragraphs 1 through 35, above, as if fully set forth in this paragraph.

45. Defendant denies generally and specifically each and every allegation in paragraph 45 of the Complaint.

46. Defendant denies generally and specifically each and every allegation in paragraph 46 of the Complaint.



1           47. Defendant denies generally and specifically each and every allegation  
2 in paragraph 47 of the Complaint.

3           48. Defendant denies generally and specifically each and every allegation  
4 in paragraph 48 of the Complaint.

5           49. Defendant denies generally and specifically each and every allegation  
6 in paragraph 49 of the Complaint.

7           50. Defendant denies generally and specifically each and every allegation  
8 in paragraph 50 of the Complaint.

9           51. Defendant denies generally and specifically each and every allegation  
10 in paragraph 51 of the Complaint.

11           52. Defendant denies generally and specifically each and every allegation  
12 in paragraph 52 of the Complaint.

13           53. Defendant denies generally and specifically each and every allegation  
14 in paragraph 53 of the Complaint.

15           54. Defendant denies generally and specifically each and every allegation  
16 in paragraph 54 of the Complaint.

17           55. Defendant denies generally and specifically each and every allegation  
18 in paragraph 55 of the Complaint.

19           56. Defendant denies generally and specifically each and every allegation  
20 in paragraph 56 of the Complaint.

21           Defendant denies that Plaintiffs are entitled to the relief requested in the  
22 Complaint or any relief at all.

23                           **REMAINING PARAGRAPHS**

24           The remaining paragraphs of the Complaint contain Plaintiffs' prayer for  
25 relief to which no response is required. To the extent a response is required,  
26 Defendant denies that Plaintiffs are entitled to the relief requested therein or any  
27 relief at all.

28



**AFFIRMATIVE DEFENSES**

Without assuming the burden of proof as to the following (other than the burden, if any, imposed by law), Defendant asserts the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure To State A Cause Of Action)**

1. Plaintiffs' Complaint, and each and every purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

**(Statutes of Limitation)**

2. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the applicable statutes of limitation, including without limitation, California Code of Civil Procedure sections 337, 338, 339, 340, and 343.

**THIRD AFFIRMATIVE DEFENSE**

**(Laches)**

3. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

4. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by Plaintiffs' unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

**(Parol Evidence)**

5. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the parol evidence rule.



**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

6. Assuming without admitting, for purposes of this affirmative defense only, that any of the allegations in Plaintiffs' Complaint are true, Plaintiffs, with actual or constructive knowledge of any and all such facts, were under a duty to mitigate damages, if any, and have failed to fulfill such duty; as a consequence, Defendant is exonerated from any liability to Plaintiffs, and damages, if any, are the sole and proximate result of Plaintiffs' failure to mitigate damages.

**SEVENTH AFFIRMATIVE DEFENSE**

**(No Proximate Cause)**

7. Assuming without admitting, for purposes of this affirmative defense only, that any of the allegations in Plaintiffs' Complaint are true, Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part on the grounds that the alleged acts or omissions of Defendant was not the proximate cause of Plaintiffs' alleged damages, if any, and Plaintiffs were not injured or damaged by any of the acts or omissions alleged in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Probable Damages)**

8. Assuming without admitting, for purposes of this affirmative defense only, that any of the allegations in Plaintiffs' Complaint are true, Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part on the grounds that Plaintiffs' alleged damages, if any, are too remote and speculative from any alleged acts or omissions by Defendant.

**NINTH AFFIRMATIVE DEFENSE**

**(Equal Dignities)**

9. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the Equal Dignities Rule.



**TENTH AFFIRMATIVE DEFENSE**

**(Accord and Satisfaction)**

10. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by accord and satisfaction.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Contributory Negligence)**

11. Assuming without admitting, for purposes of this affirmative defense only, that any of the allegations in Plaintiffs' Complaint are true, Plaintiffs have failed to exercise ordinary care, caution or prudence and the damages, if any, which Plaintiffs allege, were proximately caused and contributed to by the negligence of Plaintiffs and therefore such damages, if any, are barred and/or must be reduced in proportion to Plaintiffs' own negligence.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Excuse of Performance)**

12. The contractual obligations, if any, on the part of Defendant have been excused and discharged by Plaintiffs' own breaches.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Absence of Breach or Fault)**

13. Plaintiffs' Complaint, including each and every purported cause of action therein, fails in whole or in part for the absence of any breach or fault on the part of Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Consent)**

14. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by Plaintiffs' consent.



**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Setoff and Recoupment)**

15. Assuming without admitting, for purposes of this affirmative defense only, that any of the allegations in Plaintiffs' Complaint are true and that Defendant caused damage to Plaintiffs in any respect, Defendant is entitled to offset and recoup against any judgment that may be entered for Plaintiffs all obligations of Plaintiffs owing to Defendant.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

16. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the doctrine of waiver.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

17. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the doctrine of estoppel.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Ratification)**

18. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by Plaintiffs' ratification and approval of the alleged acts and/or omissions of which they now complain.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Good Faith Defense)**

19. Defendant is not liable, vicariously or otherwise, because Defendant acted at all times in good faith and did not directly, or indirectly, participate in or commit the alleged wrongful acts of which Plaintiffs complain.



**TWENTIETH AFFIRMATIVE DEFENSE**

**(Failure to Perform Conditions Precedent)**

20. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part because Plaintiffs have not fully and fairly performed all conditions precedent in the documents, including, without limitation, in the Building Loan Agreement (including as amended), the Deed of Trust, and the Note, under which Plaintiffs seek relief.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Contribution)**

21. If Defendant is found to be in any manner liable for the acts complained of in the Complaint, which liability is denied by Defendant, such harm was proximately caused, or contributed to, by other persons or entities, including Plaintiffs. It is necessary that the proportionate degree of fault of every said person or entity be determined and prorated and that a judgment, if any, which might be rendered against Defendant be reduced by that degree of fault found to exist on the part of such other persons or entities.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Adequate Remedy at Law)**

22. Plaintiffs' claims for equitable relief are barred in whole or in part because Plaintiffs have an adequate remedy at law.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Privilege)**

23. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part to the extent that any or all of the acts or omissions alleged to have been performed by Defendant, if performed at all, were privileged or justified.



**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

*(In Pari Delicto)*

24. Plaintiffs' Complaint is barred in whole or in part by the doctrine of *In Pari Delicto*.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(No Punitive Damages)**

25. To the extent Plaintiffs seek recovery of punitive damages, such damages are not recoverable and/or are not warranted.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(Unconstitutional Punitive or Exemplary Damages)**

26. Assuming without admitting for purposes of this affirmative defense only, that Plaintiffs have any claims against Defendant, Defendant is not liable for punitive or exemplary damages to the extent such damages do not comport with the due process and other clauses of the California and/or United States Constitutions.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Statutes of Frauds)**

27. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the applicable statutes of frauds.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Failure to Do Equity)**

28. Assuming without admitting for purposes of this affirmative defense only, that Plaintiffs have any claims against Defendant, Defendant alleges that Plaintiffs failed to do equity in the matters alleged in the Complaint, and any recovery by Plaintiffs must be diminished or barred by reason thereof.



**TWENTY-NINTH AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

29. Defendant alleges that Plaintiffs would be unjustly enriched if they were to be granted any relief, damages or sums as a result of any alleged act or omission on the part of Defendant.

**THIRTIETH AFFIRMATIVE DEFENSE**

**(Mutual Mistake of Fact)**

30. Plaintiffs' Complaint is barred in whole or in part due to a mutual mistake of fact.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

**(Unilateral Mistake of Fact)**

31. Plaintiffs' Complaint is barred in whole or in part due to a unilateral mistake of fact.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(Frustration of Purpose)**

32. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part because frustration of purpose excused Defendant from performing in the manner that Plaintiffs allege Defendant was obligated to perform.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(Breach of Duty of Good Faith and Fair Dealing)**

33. Assuming without admitting for purposes of this affirmative defense only, that Plaintiffs have any claims against Defendant, Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by Plaintiffs' breach of the covenant of good faith and fair dealing implicit in every contract.



**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

**(Lack of Consideration)**

34. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part because one or more of the alleged oral contracts that Plaintiffs seeks to enforce fails for lack of consideration.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

**(Performance and/or Discharge)**

35. Defendant has duly and fully performed, satisfied and/or discharged any duties and obligations allegedly owed to Plaintiff arising out of any alleged contracts, whether written or oral.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

**(D'Oench Duhme Doctrine)**

36. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part by the *D'Oench Duhme* doctrine, including, without limitation, as codified in 12 U.S.C. section 1823 and any and all regulations thereunder.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Lack of Jurisdiction)**

37. Plaintiffs' Complaint, including each and every purported cause of action therein, is barred in whole or in part because, under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(d)(13)(D), the Court lacks jurisdiction to decide such claims.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Reservation of Additional Defenses)**

38. Defendant has not completed its investigation and/or discovery regarding the allegations asserted by Plaintiffs. Accordingly, Defendant reserves the right to assert additional defenses as necessary based on its ongoing investigation and/or discovery.



**PRAYER**

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. That judgment be entered in favor of Defendant and against Plaintiffs and that the Complaint be dismissed with prejudice;
3. That Defendant be awarded its attorneys' fees and costs of suit herein wherever allowed by law or contract; and
4. For such other and further relief as the Court deems just and proper.

Dated: June 8, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
A. KRISTINE FLOYD  
NICHOLAS S. SHANTAR

By: /s/A. Kristine Floyd

A. KRISTINE FLOYD  
Attorneys for Defendant and  
Counterclaimant INDYMAC  
VENTURE, LLC

**JURY DEMAND**

Defendant and Counterclaimant Indymac Venture, LLC demands a trial by jury on all issues so triable.

Dated: June 8, 2011

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
A. KRISTINE FLOYD  
NICHOLAS S. SHANTAR

By: /s/A. Kristine Floyd

A. KRISTINE FLOYD  
Attorneys for Defendant and  
Counterclaimant INDYMAC  
VENTURE, LLC



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that: I am over the age of eighteen (18) and not a party to the within action. I am employed in the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP, 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On June 8, 2011, I used the Northern District of California's Electronic Case Filing System, with the ECF registered to A. Kristine Floyd to file the following document:

**ANSWER OF DEFENDANT AND COUNTERCLAIMANT  
INDYMAC VENTURE, LLC TO COMPLAINT  
[DEMAND FOR JURY TRIAL]**

The ECF system is designed to send an e-mail message to all parties in the case, which constitutes service. The parties by e-mail in this case are found on the Court's Electronic Mail Notice List.

Notice has been given via First Class U.S. Mail to:

W. Kenneth Howard, Esq.  
Attorney At Law  
116 East Campbell Avenue, Suite 7  
Campbell, California 95008  
Phone: (408) 379-1904  
Fax: (408) 379-1902

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 8, 2011, at Irvine, California.

By: /s/A. Kristine Floyd  
A. KRISTINE FLOYD